



## ALERTS

### Auto Supply Chain Rocked: Michigan Supreme Court's Decision Impacts Enforceability Of Blanket Purchase Orders

July 21, 2023

#### Highlights

Blanket purchase orders that fail to obligate a buyer to purchase at least some quantity of parts from the supplier are unenforceable on their own, the Michigan Supreme Court ruled

Release-by-release contracts are only enforceable once a firm quantity is stated in future releases or purchase orders

A requirements contract assures the seller that the buyer will be a customer for the life of the contract, but the seller cannot reject future orders for the life of the contract

On July 11, 2023, the Michigan Supreme Court distinguished blanket purchase orders from requirements contracts, and held that blanket purchase orders that fail to obligate the buyer to purchase some quantity of parts are, standing alone, unenforceable.

The court's decision in *MSSC, Inc., v. Airboss Flexible Products Co.*, says blanket purchase orders are akin to "umbrella agreements" that govern future releases where the seller or buyer can accept or reject future orders – formally recognizing what is termed a "release-by-release"

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contract. By contrast, a requirements contract “assures the seller that the buyer will be a customer for the length of the contract, but the seller cannot reject future orders for the length of the contract.”

The Supreme Court’s decision has wide implications for the automotive supply chain industry and comes on the heels of record inflation that has financially crippled lower-tiered suppliers. The decision may embolden suppliers to demand price increases to reflect their escalating costs in supplying parts. While the decision is binding only in the state of Michigan, other states are likely to follow the Michigan Supreme Court’s lead, as Michigan remains a major player in the automotive industry and has a history of well-established cases governing automotive supply disputes.

In *MSSC v. Airboss*, the parties were both automotive suppliers that conducted business with one another since at least 2013. Sometime in 2013, MSSC contracted with an original equipment manufacturer to build suspension systems for various vehicle platforms. In order to build the suspension systems, MSSC issued a “blanket purchase order” to Airboss, a tier-2 supplier, that stated, in pertinent part:

If this Purchase Order is identified as a “blanket” order, this order is valid and binding on seller for the lifetime of the program or until terminated pursuant to MSSC’s Terms and Conditions.

In regards to quantity, the purchase order was non-committal, stating, “[a]nnual volume is an estimate based on the forecasts MSSC’s customers and cannot be guaranteed.” In the normal course of business, MSSC issued “Vendor Release and Shipping Schedules” to Airboss that included a “firm order” as well as long-term estimates. MSSC was thus obligated to send the “releases” per the terms and conditions, but neither the purchase order nor the terms and conditions obligated MSSC to send any number of releases to Airboss. In other words, MSSC could simply stop sending orders to Airboss and effectively end the parties’ commercial relationship.

According to the Supreme Court’s decision, for over six years, the relationship was profitable for both parties and continued to operate under the original blanket purchase order and the releases issued by MSSC. However, in 2019, Airboss began experiencing losses on several parts it was producing for MSSC. As a result, Airboss requested price increases to which MSSC agreed on the condition that the parties enter into a letter agreement barring further unilateral price increases for the life of the program. Although Airboss agreed to the letter agreement, it continued to lose money and advised MSSC in December 2019 that it would cease supplying parts starting in March 2020.

MSSC filed suit alleging claims for breach of contract and specific performance of the blanket purchase order. The Oakland County Circuit Court granted injunctive relief to MSSC, holding that the parties entered into a “requirements contract” and that MSSC was likely to prevail on the merits. After dueling motions for summary disposition, the trial court ruled in favor of MSSC and held that the purchase order contained a quantity term as required by the statute of frauds because the purchase order was labeled a blanket purchase order. The court also analyzed the parties’ course of dealing as further evidence of a binding contractual relationship.

The Michigan Court of Appeals affirmed the trial court’s decision in a

published per curiam decision. The Court of Appeals held that the use of “blanket order” was intended as an imprecise “quantity term” such that it satisfied the statute of frauds. Applying long-standing Michigan precedent, the Court of Appeals reasoned that the purchase order “did not state a specific quantity because plaintiff’s need for parts was dependent on its customer’s production schedule, which is common in the automotive industry.” The Michigan Supreme Court granted Airboss’ application to appeal and posed the following question to the parties:

Whether the purchase order between the parties, together with the relevant terms and conditions, satisfied the requirements of the Uniform Commercial Code’s statute of frauds, MCL 440.2201(1).

In reversing the Court of Appeals, the Michigan Supreme Court upended years of precedent and held that MSSC’s blanket purchase order created a “release-by-release” contract, but not a requirements contract that obligated Airboss to perform. The Supreme Court noted the writings between the parties lacked any sort of quantity term and placed all the risk on the supplier as the buyer had no obligation to issue releases in the future. As a result, “Airboss was free to provide MSSC with notice that it would no longer accept future releases.”

The court also acknowledged that “Michigan case law has not previously identified a release-by-release contract as a specific contract type.” The Supreme Court thus “adopt[ed] the term ‘release-by-release’ to describe a contract with an umbrella agreement that includes general terms but which lacks a quantity term and which operates via releases issued by the buyer to the seller.”

## Key Takeaways

The impact of this decision will be felt throughout the automotive industry as suppliers will no doubt look to renegotiate pricing on long-term contracts. However, the decision does not do away with blanket purchase orders altogether. As long as a quantity term is stated, even if the term is imprecise, the court will look to the parties’ course of dealing to supply a quantity term and enforce the agreement.

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